

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MICHAEL DAVITT,

Petitioner,

vs.

NEVADA ATTORNEY GENERAL,

Respondents.

3:08-cv-00556-LRH-RAM

ORDER

Before the court is petitioner's Petition for Rehearing (docket #10) in which he advises the court that he did not receive respondents' motion to dismiss. No response has been received, but it does not appear that petitioner served the petition for rehearing upon respondents.

The Court treats petitioner's motion as one made under Federal Rule of Civil Procedure 59 because the order in question "ends the litigation on the merits and leaves nothing for the court to do but execute the judgement." *See Catlin v. United States*, 324 U.S. 229, 233 (1945). *See also Balla v. Idaho State Bd. of Corrections*, 869 F.2d 461, 466-67 (9th Cir.1989); *Stephenson v. Calpine Conifers II, Ltd.*, 652 F.2d 808, 812 (9th Cir. 1981), overruled in part on other grounds, *In re Washington Public Power Supply System Securities Litigation*, 823 F.2d 1349, 1350-52, 1358 (9th Cir. 1987) (en banc). Such a motion must be made within ten days of entry of the judgment. F.R.C.P. 59(e). In this case, judgment was entered on September 4, 2009. Petitioner's request for rehearing was not received by the court until September 16, 2009. Thus, it is untimely.

1 Additionally, petitioner's arguments are unavailing. The brief in question includes a
2 certificate of service for petitioner at the Ely State Prison (docket #5). After the motion to dismiss
3 was filed on January 16, 2009, the court sent petitioner notice of the importance of responding to the
4 motion to dismiss on January 20, 2009 (docket #6). This notice was not returned to the court as
5 undeliverable. Neither did petitioner inform the court at any point prior to entry of the order and
6 judgment that he had not received the state's brief. Therefore, it appears that the motion as well the
7 order were, in fact, delivered to petitioner's correct address.

8 Petitioner offers no "evidence" to support his claim. Good cause appearing, the request for
9 reconsideration shall be denied.

10 **IT IS THEREFORE ORDERED** that the petition for rehearing (docket #10) is **DENIED**.

11 DATED this 4th day of March, 2010.

A handwritten signature in blue ink, appearing to read "L. Hicks", is written over a faint circular stamp.

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15 LARRY R. HICKS
UNITED STATES DISTRICT JUDGE
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